

SECOND REGULAR SESSION

SENATE BILL NO. 1281

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time February 28, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5401S.011

AN ACT

To repeal sections 32.063, 136.055, 144.060, 144.069, 144.080, 144.081, 144.100, 144.130, and 144.525, RSMo, and to enact in lieu thereof ten new sections relating to collection of taxes by motor vehicle dealers, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 32.063, 136.055, 144.060, 144.069, 144.080, 144.081, 144.100, 144.130, and 144.525, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 32.063, 136.055, 144.060, 144.069, 144.080, 144.081, 144.100, 144.130, 144.145, and 144.525, to read as follows:

32.063. 1. The director of revenue, his employees or agents may accept credit cards in payment of taxes and fees. The type of credit cards accepted shall be at the discretion of the director.

2. In addition to other fees provided by law, the director of revenue may set a fee to be added to each credit card transaction equal to the charge paid by the state or the taxpayer for the use of the credit card by the taxpayer. No other fees shall be imposed other than those herein authorized.

3. For purposes of this section, a motor vehicle dealer shall be considered to be an agent of the department of revenue.

136.055. 1. Any person who is selected or appointed by the state director of revenue to act as an agent of the department of revenue, whose duties shall be the sale of motor vehicle licenses and the collection of motor vehicle sales and use taxes [under the provisions of section] **when required under sections 144.070 and 144.440**, RSMo, and who receives no salary from the department of revenue, shall be authorized to collect from the party requiring such services additional fees as compensation in full and for all services rendered on the following basis:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 (1) For each motor vehicle or trailer license sold, renewed or
9 transferred--two dollars and fifty cents beginning January 1, 1998; and four
10 dollars beginning July 1, 2000; and five dollars beginning August 28, 2002, for
11 those licenses biennially renewed pursuant to section 301.147, RSMo. Beginning
12 July 1, 2003, for each motor vehicle or trailer license sold, renewed or
13 transferred--three dollars and fifty cents and seven dollars for those licenses sold
14 or biennially renewed pursuant to section 301.147, RSMo;

15 (2) For each application or transfer of title--two dollars and fifty cents
16 beginning January 1, 1998;

17 (3) For each instruction permit, nondriver license, chauffeur's, operator's
18 or driver's license issued for a period of three years or less--two dollars and fifty
19 cents and five dollars for licenses or instruction permits issued or renewed for a
20 period exceeding three years;

21 (4) For each notice of lien processed--two dollars and fifty cents beginning
22 August 28, 2000;

23 (5) No notary fee or other fee or additional charge shall be paid or
24 collected except for electronic telephone transmission reception--two dollars.

25 2. All fees charged shall not exceed those in this section. Beginning July
26 1, 2003, the fees imposed by this section shall be collected by all permanent
27 branch offices and all full-time or temporary offices maintained by the
28 department of revenue.

29 3. Any person acting as agent of the department of revenue for the sale
30 and issuance of licenses and other documents related to motor vehicles shall have
31 an insurable interest in all license plates, licenses, tabs, forms and other
32 documents held on behalf of the department.

33 4. The fee increases authorized by this section and approved by the
34 general assembly were requested by the fee agents. All fee agent offices shall
35 display a three foot by four foot sign with black letters of at least three inches in
36 height on a white background which states:

37 The increased fees approved by the
38 Missouri Legislature and charged by
39 this fee office were requested by the
40 fee agents.

144.060. It shall be the duty of every person making any purchase or
2 receiving any service upon which a tax is imposed by sections 144.010 to 144.510
3 to pay, to the extent possible under the provisions of section 144.285, the amount

4 of such tax to the person making such sale or rendering such service; any person
5 who shall willfully and intentionally refuse to pay such tax shall be guilty of a
6 misdemeanor[; provided, however, that the provisions of this section shall not
7 apply to any person making any purchase or sale of a motor vehicle subject to
8 sales tax as provided by the Missouri sales tax law].

144.069. [All sales of motor vehicles, trailers, boats and outboard motors]
2 **Fifty percent of each sale of a motor vehicle, trailer, boat and outboard**
3 **motor** shall be deemed to be consummated at the address of the owner [thereof]
4 **and fifty percent of each such sale shall be deemed to be consummated**
5 **at the address of the seller**, and [all leases] **fifty percent of each lease of**
6 **over sixty-day duration of a motor [vehicles, trailers, boats and outboard motors]**
7 **vehicle, trailer, boat and outboard motor** subject to sales taxes under this
8 chapter shall be deemed to be consummated [unless the vehicle, trailer, boat or
9 motor has been registered and sales taxes have been paid prior to the
10 consummation of the lease agreement] at the address of the lessee [thereof] **and**
11 **fifty percent of each such lease shall be deemed to be consummated at**
12 **the address of the lessor** on the date the lease is consummated, **unless the**
13 **vehicle, trailer, boat, or motor has been registered and sales taxes have**
14 **been paid prior to the consummation of the lease agreement**, and all
15 applicable sales taxes levied by any political subdivision shall be collected on such
16 sales by the state department of revenue on that basis.

144.080. 1. Every person receiving any payment or consideration upon
2 the sale of property or rendering of service, subject to the tax imposed by the
3 provisions of sections 144.010 to 144.525, is exercising the taxable privilege of
4 selling the property or rendering the service at retail and is subject to the tax
5 levied in section 144.020. The person shall be responsible not only for the
6 collection of the amount of the tax imposed on the sale or service to the extent
7 possible under the provisions of section 144.285, but shall, on or before the last
8 day of the month following each calendar quarterly period of three months, file
9 a return with the director of revenue showing the person's gross receipts and the
10 amount of tax levied in section 144.020 for the preceding quarter, and shall remit
11 to the director of revenue, with the return, the taxes levied in section 144.020,
12 except as provided in subsections 2 and 3 of this section. The director of revenue
13 may promulgate rules or regulations changing the filing and payment
14 requirements of sellers, but shall not require any seller to file and pay more
15 frequently than required in this section.

16 2. Where the aggregate amount levied and imposed upon a seller by
17 section 144.020 is in excess of two hundred and fifty dollars for either the first or
18 second month of a calendar quarter, the seller shall file a return and pay such
19 aggregate amount for such months to the director of revenue by the twentieth day
20 of the succeeding month. **Failure of a seller to remit such aggregate**
21 **amount timely shall result in a one thousand dollar late or insufficiency**
22 **penalty. Failure of a seller to remit such aggregate amount plus**
23 **penalty within ten business days of the original due date in this**
24 **subsection, or in the case of a subsequent insufficiency or untimely**
25 **remittance within any twelve month period, shall result in a five**
26 **thousand dollar penalty. Failure of a seller to remit such aggregate**
27 **amount plus penalty within twenty business days or the original due**
28 **date in this subsection, or in the case of a third insufficiency or**
29 **untimely remittance within any twelve month period, shall result in a**
30 **ten thousand dollar penalty. Failure of a seller to remit such aggregate**
31 **amount plus penalty within thirty business days of the original due**
32 **date in this subsection, or in the case of a fourth insufficiency or**
33 **untimely remittance within any twelve month period, shall result in the**
34 **suspension or revocation of any and all specific licenses required to**
35 **conduct his or her business in this state until such time as all**
36 **remittance and penalties, including any reinstatement fees, have been**
37 **fully satisfied. Any seller causing the department of revenue to**
38 **exercise suspension or revocation of any business license required by**
39 **this state a second time shall forfeit his or her specific license to**
40 **transact business in this state indefinitely.**

41 3. Where the aggregate amount levied and imposed upon a seller by
42 section 144.020 is less than forty-five dollars in a calendar quarter, the director
43 of revenue shall by regulation permit the seller to file a return for a calendar
44 year. The return shall be filed and the taxes paid on or before January
45 thirty-first of the succeeding year. **The department of revenue shall issue**
46 **a credit on the succeeding quarterly required remittance and return to**
47 **a seller any amounts remitted for satisfying and returning any tax**
48 **obligation on behalf of a purchaser causing a credit card reversal or**
49 **presenting insufficient monetary instruments for the tax imposed by**
50 **section 144.020.**

51 4. The seller of any property or person rendering any service, subject to
52 the tax imposed by sections 144.010 to 144.525, shall collect the tax from the

53 purchaser of such property or the recipient of the service to the extent possible
54 under the provisions of section 144.285, but the seller's inability to collect any
55 part or all of the tax does not relieve the seller of the obligation to pay to the
56 state the tax imposed by section 144.020; except that the collection of the tax
57 imposed by sections 144.010 to 144.525 on motor vehicles and trailers shall be
58 made as provided in sections 144.070 and 144.440.

59 5. It shall be unlawful for any person to advertise or hold out or state to
60 the public or to any customer directly or indirectly that the tax or any part
61 thereof imposed by sections 144.010 to 144.525, and required to be collected by
62 the person, will be assumed or absorbed by the person, or that it will not be
63 separately stated and added to the selling price of the property sold or service
64 rendered, or if added, that it or any part thereof will be refunded. Any person
65 violating any of the provisions of this section shall be guilty of a misdemeanor.

144.081. 1. The director of revenue, by regulation, may require a seller
2 to timely remit the unpaid state sales **and tangible personal property** tax for
3 each quarter-monthly period, only if the seller's aggregate state sales tax was ten
4 thousand dollars or more in each of at least six months during the prior twelve
5 months. The term "state sales tax" as used in this section means the tax imposed
6 by sections 144.010 to 144.510 and the additional sales tax imposed by sections
7 43(a) to 43(c) and 47(a) to 47(c) of article IV of the Missouri Constitution and does
8 not include any sales taxes imposed by political subdivisions of the state pursuant
9 to other provisions of law.

10 2. The director may increase the monthly requirement to more than ten
11 thousand dollars or otherwise narrow the application of the quarter-monthly
12 remittance system authorized by this section. The director may not require the
13 remittance of state sales taxes more often than monthly unless authorized by this
14 section.

15 3. A remittance shall be timely if mailed as provided in section 143.851,
16 RSMo, within three banking days after the end of the quarter-monthly period or
17 if received by the director or deposited in a depository designated by the director
18 within four banking days after the end of the quarter-monthly period.

19 4. The unpaid amount shall be after a reduction for the compensation
20 provided by section 144.140. The unpaid amount at the end of a quarter-monthly
21 period shall not include unpaid amounts for a prior quarter-monthly period only
22 if the seller made a remittance with respect to the prior quarter-monthly
23 period. The excess, if any, of a remittance over the actual amount for a period

24 shall be applied in order of time to each of the seller's succeeding remittances
25 with respect to the same return period.

26 5. For purposes of this section, "quarter-monthly period" means:

- 27 (1) The first seven days of a calendar month;
28 (2) The eighth to fifteenth day of a calendar month;
29 (3) The sixteenth to twenty-second day of a calendar month; and
30 (4) The portion following the twenty-second of a calendar month.

31 6. (1) In the case of an underpayment of any amount required to be paid
32 pursuant to this section, a seller shall be liable for a penalty in lieu of all other
33 penalties, interest or additions to tax imposed by this chapter for violating this
34 section. The penalty shall be five percent of the amount of the underpayment
35 determined under subdivision (2) of this subsection.

36 (2) The amount of the underpayment shall be the excess of:

- 37 (a) Ninety percent of the unpaid amount at the end of a quarter-monthly
38 period, over
39 (b) The amount, if any, of the timely remittance for the quarter-monthly
40 period.

41 7. (1) The penalty with respect to any quarter-monthly period shall not
42 be imposed if the seller's timely remittance for the quarter-monthly period equals
43 or exceeds one-fourth of the average monthly state sales tax liability of the seller
44 for the preceding calendar year. The month of highest liability and the month of
45 lowest liability shall be excluded in computing the average. This subdivision
46 shall apply only to a seller who had a state sales tax liability for at least six
47 months of the previous calendar year.

48 (2) The penalty shall not be imposed if the seller establishes that the
49 failure to make a timely remittance of at least ninety percent was due to
50 reasonable cause, and not due to willful neglect.

51 (3) The penalty shall not be imposed against any seller for the first two
52 months the seller is obligated to make quarter-monthly remittance of state sales
53 taxes.

54 8. Tax amounts remitted under this section shall be treated as payments
55 on the seller's monthly return required by sections 144.080 and 144.090. Tax
56 amounts remitted under this section shall be deemed to have been paid on the
57 last day prescribed for filing the return. The preceding sentence shall apply in
58 computing compensation under section 144.140, interest, penalties and additions
59 to tax and for purposes of all sections of this chapter, except this section.

60 9. The director of revenue may prescribe the use of an electronic funds
61 payment system for the payment of sales and use taxes by any seller subject to
62 the requirement of quarter-monthly remittance as provided in this section.

144.100. 1. Every person making any taxable sales of property or service[,
2 except transactions provided for in sections 144.070 and 144.440], individually
3 or by duly authorized officer or agent, shall make and file a written return with
4 the director of revenue in such manner as he may prescribe.

5 2. The returns shall be on blanks designed and furnished by the director
6 of the department of revenue and shall be filed at the times provided in sections
7 144.080 and 144.090. The returns shall show the amount of gross receipts from
8 sales of taxable property and services by the person and the amount of tax due
9 thereon by that person during and for the period covered by the return. With
10 each return, the person shall remit to the director of revenue the full amount of
11 the tax due.

12 3. In case of charge and time sales the gross receipts thereof shall be
13 included as sales in the returns as and when payments are received by the
14 person, without any deduction therefrom whatsoever.

15 4. If an error or omission is discovered in a return or a change be
16 necessary to show the true facts, the error may be corrected, the omission
17 supplied, or the change made in the return next filed with the director for the
18 filing period immediately following the filing period in which the error was made
19 or the omission occurred, as prescribed by law, except that no refund under this
20 chapter shall be allowed for any amount of tax paid by a seller which is based
21 upon charges incident to credit card discounts. Any other omission or error must
22 be corrected by filing an amended return for the erroneously reported period if
23 the amount of tax is less than that originally reported, or an additional return if
24 the amount of tax is greater than that originally reported. An additional return
25 shall be deemed filed on the date the envelope in which it is mailed is postmarked
26 or the date it is received by the director, whichever is earlier. Any payment of
27 tax, interest, penalty or additions to tax shall be deemed filed on the date the
28 envelope containing the payment is postmarked or the date the payment is
29 received by the director, whichever is earlier. If a refund or credit results from
30 the filing of an amended return, no refund or credit shall be allowed unless an
31 application for refund or credit is properly completed and submitted to the
32 director pursuant to section 144.190.

33 5. The amount of gross receipts from sales and the amount of tax due

34 returned by the person, as well as all matters contained in the return, is subject
35 to review and revision in the manner herein provided for the correction of the
36 returns.

144.130. Refunds made by the person during the preceding calendar
2 month or calendar quarter, **or in the case of a motor vehicle purchase, then**
3 **the preceding twenty-four month calendar**, to purchasers, on account of
4 tangible personal property, substances, services [and], things, **and motor**
5 **vehicles** returned to the persons shall be allowed as a deduction from the gross
6 receipts required to be stated in the returns filed with the director of revenue;
7 provided, the person had theretofore included the said refunded receipts in a
8 return made by such person and had paid the amount imposed by sections
9 144.010 to 144.510 with respect thereto; provided, the seller has returned to the
10 purchaser any and all tax previously paid by the purchaser at the time of the
11 purchase. **However, when the seller is a motor vehicle dealer as defined**
12 **in section 301.010, RSMo, or when the sale was financed by a financial**
13 **institution as defined in section 404.007, RSMo, and the tangible**
14 **personal property, substances, services, things, or motor vehicle is**
15 **repossessed, the provision of this section requiring that the seller has**
16 **returned to the purchaser any and all tax previously paid by the**
17 **purchaser at the time of the purchase does not apply.**

144.145. Any person licensed by the director of revenue under
2 sections 301.550 to 301.573, RSMo, as a new or used motor vehicle
3 dealer shall collect and remit sales and use tax under the provisions of
4 this chapter, at the time of sale on all motor vehicles, trailers, or boats
5 sold by the licensed dealership. Such person shall receive no salary
6 from the department of revenue but will be allowed to retain any
7 amount authorized by section 144.140. The director of revenue may
8 prescribe rules and regulations for the administration of this
9 section. Any rule or portion of a rule, as that term is defined in section
10 536.010, RSMo, that is created under the authority delegated in this
11 section shall become effective only if it complies with and is subject to
12 all of the provisions of chapter 536, RSMo, and, if applicable, section
13 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
14 and if any of the powers vested with the general assembly pursuant to
15 chapter 536, RSMo, to review, to delay the effective date, or to
16 disapprove and annul a rule are subsequently held unconstitutional,

17 **then the grant of rulemaking authority and any rule proposed or**
18 **adopted after August 28, 2008, shall be invalid and void.**

144.525. Notwithstanding any other provision of law, the amount of any
2 state and local sales [or], use, **or tangible personal property** taxes due on the
3 purchase of a motor vehicle, trailer, boat or outboard motor required to be
4 registered under the provisions of sections 301.001 to 301.660, RSMo, and
5 sections 306.010 to 306.900, RSMo, shall be computed on the rate of such taxes
6 in effect on the date the purchaser submits application for a certificate of
7 ownership to the director of revenue; except that, in the case of a sale at retail[,]
8 of an outboard motor by a retail business which is not required to be registered
9 under the provisions of section 301.251, RSMo, the amount of state and local sales
10 [and], use, **or tangible personal property** taxes due shall be computed on the
11 rate of such taxes in effect as of the calendar date of the retail sale.

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